

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EDMUNDS HOLDING COMPANY,)	
A Delaware Corporation, and)	
)	
EDMUNDS.COM, INC.,)	
A New York Corporation,)	
)	C.A. No. 08-149 (SLR)
Plaintiffs,)	
)	
v.)	
)	
AUTOBYTEL INC.,)	
)	
Defendant.)	

**DEFENDANT’S MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION UNDER FED. R. CIV. P. 12(B)(1)**

Defendant Autobytel, Inc. (“Autobytel”) respectfully submits this motion for dismissal with prejudice of all claims of plaintiffs’ Complaint for Declaratory Judgment.

As set forth in the accompanying memorandum, subject matter jurisdiction under the Declaratory Judgment Act requires a “case of actual controversy.” However, the facts alleged demonstrate that no such controversy exists.

For the reasons set forth more fully in the accompanying memorandum it is respectfully requested that the Court dismiss with prejudice all claims of plaintiffs’ Complaint for Declaratory Judgment pursuant to Fed. R. Civ. P. 12(b)(1). A proposed order is also submitted herewith.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ James W. Parrett, Jr.

Thomas C. Grimm (#1098)
James W. Parrett, Jr. (#4292)
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899-1347
(302) 658-9200
tgrimm@mnat.com
jparrett@mnat.com
Attorneys for Defendant

OF COUNSEL:

Timothy J. Haller
Gregory P. Casimer
NIRO, SCAVONE, HALLER & NIRO
181 West Madison Street, Suite 4600
Chicago, IL 60602-4515
(312) 236-0733

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2008, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered participants.

I also certify that on June 18, 2008, I caused to be served true and correct copies of the foregoing document on the following in the manner indicated below:

BY E-MAIL

Melanie K. Sharp
YOUNG CONAWAY STARGATT & TAYLOR LLP
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391

Steven M. Bauer
Jeremy P. Oczek
PROSKAUER ROSE LLP
One International Place, 14th Floor
Boston, MA 02110-2600

/s/ James W. Parrett, Jr.

James W. Parrett, Jr. (#4292)
jparrett@mnat.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EDMUNDS HOLDING COMPANY,)	
A Delaware Corporation, and)	
)	
EDMUNDS.COM, INC.,)	
A New York Corporation,)	
)	C.A. No. 08-149 (SLR)
Plaintiffs,)	
)	
v.)	
)	
AUTOBYTEL INC.,)	
)	
Defendant.)	

PROPOSED ORDER

This matter having come before the Court on Defendant Autobytel, Inc.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction Under Fed. R. Civ. P. 12(b)(1), the Court having considered the submissions of the parties and being fully advised, IT IS HEREBY ORDERED THAT:

[Plaintiffs' Complaint for Declaratory Judgment is DISMISSED WITH PREJUDICE pursuant to Fed. R. Civ. P. 12(b)(1).]

SO ORDERED this ____ day of _____, 2008.

United States District Judge